



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable William R. Edwards  
County Judge  
Upton County  
Rankin, Texas

Dear Sir:

Opinion No. 0-6354

Re: Whether the Commissioners' Court of Upton County has the authority to employ an attorney to advise the Court and the county officials during the absence of the present county attorney, who is in the armed forces?  
And other questions.

Your letter of January 1, 1945, requesting the opinion of this Department on the questions stated therein, is in part, as follows:

"Due to the fact that we have no County Attorney, I find it necessary to ask for your opinion on the following matter and in order that you might understand will go somewhat into detail. The County Attorney of this County was inducted into the Military Service long about May of 1944 and the County has been paying him his salary of One Hundred Fifty Dollars. (\$150.00) a month since that time, although it was necessary to employ counsel for advice to the Court and the various officers of the County. The present County Attorney was reelected for the ensuing term but is now somewhere in France or England and he has filed with the Commissioners' Court a

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bond in correct form, except that it is signed, him by an agent and the oath of office is also signed by the same agent.

"QUESTION

"Is this bond a valid one signed as above indicated and is the oath of office subscribed to by his agent valid?

"Does the Commissioners' Court of Upton County have the right to employ an attorney to advise the Court and the officers during the absence of the present County Attorney?"

Under the provisions of Article 4399, Vernon's Annotated Civil Statutes, this Department is prohibited from rendering legal opinions to County Judges, but, in view of the fact that your County is without the services of the County Attorney at the present, we feel it is appropriate to answer your question.

Article 16, Vernon's Annotated Civil Statutes, provides that each officer in this State, whether elected or appointed shall, before entering upon the duties of his office, take and subscribe the oath prescribed by Article 16, Section 1 of the Constitution of this State; and if he shall be required by law to give an official bond, said oath shall be filed with said bond.

Article 330, V. A. C. S., provides that each County Attorney shall, before entering upon the duties of his office give bond, etc.

Article 5998, V. A. C. S., provides that the official bond of each officer shall be executed by him with two or more good and sufficient sureties or solvent surety company authorized to do business in this State.

Article 26, V. A. C. S., provides that all oaths, affidavits or affirmations may be administered and a certificate of the fact given, if without the United States, before any notary public, or any minister, commissioner or charge d'affaires of the United States, resident in and accredited to the country where the affidavit may be taken, or any consul general, consul, vice-consul,

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commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States, resident in such country.

Section 1, Article 16 of the State Constitution, provides the form of oath or affirmation to be used. Article 6602, V. A. C. S., provides for the making of an acknowledgment or proof of an instrument of writing for record before certain officials, and would have no application to the taking of an official oath. We see no legal reason why the person who was elected County Attorney, could not execute his official bond while on Military service in a foreign country, and also take and subscribe the oath prescribed by the Constitution before any person authorized by Article 26 to administer the same. The bond and oath of office filed by the County Attorney with the Commissioners' Court appears to be in correct form, except that the bond and oath of office are signed by an agent of the County Attorney. In view of the foregoing statutes and the Constitution provision, it is our opinion that the County Attorney must execute the oath of office in the form prescribed by the Constitution. Neither the Constitution nor the Statutes authorizes a public official to execute his oath of office by an agent; therefore, we believe that the oath of office executed by an agent is invalid. With reference to the validity of the bond we are confronted with a more serious problem. Generally speaking, ordinarily a person may do by or through his agent what he can do himself. We have failed to find any authority whatsoever pertaining to the authority of the public official executing his official bond by and through an agent. We cannot categorically say whether or not the bond as executed by the agent is valid or invalid. It is our opinion that the County Attorney should take and subscribe the oath prescribed by Article 16, Section 1 of the Constitution of this State before any person authorized by Article 26 to administer same. It would be safer practice for the County Attorney to also execute his bond by signing it personally.

We now consider your question with reference to the authority of the Commissioners' Court of your County to employ an attorney to advise the Court and the county officials during the absence of the County Attorney. It is stated in Texas Jurisprudence, Vol. 11, P. 575:

"The commissioners' court has power to employ attorneys to assist the regularly constituted officers of the county in the prosecution of its claims

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and suits, and to pay for such services out of the county funds. It seems, however, that the commissioners' court does not have the power to deprive the county attorney of his rightful authority in this regard. The employment of counsel is restricted to special cases where the services of an attorney are required; nor has the court power to make an order which will warrant the payment of county money to an attorney for services neither required nor performed." (Adams v. Seagler, 250 S. W. 413; Gibson v. Davis, 236 S. W. 202; Terrel v. Greene, 31 S. W. 631; Grooms v. Atascosa County, 32 S. W. 188).

Under the holdings of the above mentioned cases, it is apparent that the Commissioners' Court has the power and authority to employ attorneys in the prosecution of its claims and suits and pay for such services out of the general funds of the county where the county, as a whole, is interested and effected by such proceedings. Article 334, V. A. C. S., provides:

"The district and county attorneys, upon request, shall give an opinion or advice in writing to any county or precinct officer of their district or county, touching their official duties."

The foregoing statute imposes upon the district and county attorneys the duty to give opinions and advice in writing to any county or precinct officer of their district or county. The county and precinct officials of your county may request your district attorney for opinions and advice in writing touching their official duties.

Specifically answering your question regarding the employment of an attorney, it is our opinion that under the facts stated by you and the foregoing statutes and the rules of laws mentioned in our Opinion No. 0-4979, a copy of which is enclosed for your convenience, the Commissioners' Court would not have the authority to engage counsel to perform the duties of county attorney of your county, but that it would have the authority to engage counsel to advise the Commissioners' Court, but would not have authority to employ an attorney to advise county and precinct officials, as it has been held that Article 334 was intended to impose the duty upon the county and district attorneys, and not as a restriction upon the Commissioners' Court in the employ-

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ment of attorneys to advise and render services to the County in important matters coming before it for its consideration. Gibson, et al. v. Davis, et al, 236 S. W. 202.

With reference to the appointment of county attorneys pro tem and other matters pertaining to the rights of the Commissioners' Court in employing attorneys we direct your attention to Opinion No. 0-4979.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*  
Ardell Williams  
Assistant

*Wm R Edwards*  
JUN 19 1945

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